

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Teecie Dove	Team: Squad #02	CCRB Case #: 202101774	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/16/2021 3:30 PM	Location of Incident: § 87(2)(b) in Brooklyn	18 Mo. SOL 9/16/2022	Precinct: 60		
Date/Time CV Reported Thu, 03/18/2021 9:24 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 03/18/2021 9:24 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Desena	03631	961726	060 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Phillip Small	09147	966859	060 PCT
2. PO Connor Keane	26409	967138	060 PCT
3. PO Jonathan Warfield	11222	962159	060 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Robert Desena	Abuse: Police Officer Robert Desena entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B . POM Robert Desena	Abuse: Police Officer Robert Desena searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C . POM Robert Desena	Discourtesy: Police Officer Robert Desena spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D . POM Robert Desena	Discourtesy: Police Officer Robert Desena spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E . POM Robert Desena	Abuse: Police Officer Robert Desena threatened to arrest § 87(2)(b)	§ 87(2)(b)
F . POM Robert Desena	Abuse: Police Officer Robert Desena refused to provide his name to § 87(2)(b)	§ 87(2)(b)
G . POM Robert Desena	Off. Language: Police Officer Robert Desena made remarks to § 87(2)(b) based upon race.	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint on March 18th, 2021, via the CCRB's website. This case was initially assigned to Investigator Kenneth Shelton. It was reassigned to Investigator Santosh Prakash on May 24, 2021, and then to Investigator Teecie Dove on November 26th, 2021.

On March 16th, 2021, at approximately 3:30 PM, Police Officer Robert Desena, Police Officer Connor Keane, Police Officer Jonathan Warfield, and Police Officer Phillip Small of the 60th Precinct responded to a 911 call reporting a trespass at § 87(2)(b) and § 87(2)(b) apartment, located at § 87(2)(b) § 87(2)(b) in Brooklyn. § 87(2)(b) and § 87(2)(b) exited, and Police Officer Desena entered and allegedly searched the apartment (**Allegation A: Abuse of Authority – Entry of Premises**, § 87(2)(g) (**Allegation B: Abuse of Authority – Search of Premises**, § 87(2)(g) Police Officer Desena used profanity multiple times while speaking with § 87(2)(b) and § 87(2)(b) (**Allegations C and D: Discourtesy – Word**, § 87(2)(g) Police Officer Desena allegedly threatened to arrest § 87(2)(b) (**Allegation E: Abuse of Authority – Threat of Arrest**, § 87(2)(g) As Police Officer Desena was leaving, § 87(2)(b) asked for his name, and Police Officer Desena did not respond (**Allegation F: Abuse of Authority – Refusal to Provide Name**, § 87(2)(g) Police Officer Desena allegedly turned around as he was leaving and called § 87(2)(b) a “nigger” (**Allegation G: Offensive Language – Race**, § 87(2)(g) No one was summonsed or arrested during this incident.

Body-worn camera (BWC) footage was received from the BWCs of Police Officer Desena (**BR 19**), Police Officer Keane (**BR 01**), Police Officer Warfield (**BR 18**), and Police Officer Small (**BR 01**). The BWC footage is attached to IA #38 (**BR 01**) and summarized in IA #44 (**BR 02**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Robert Desena entered § 87(2)(b) in Brooklyn.

Allegation (B) Abuse of Authority: Police Officer Robert Desena searched § 87(2)(b) in Brooklyn.

§ 87(2)(b) was interviewed by the CCRB on September 7th, 2021 (**BR 03**). The investigation was unable to obtain a statement from § 87(2)(b) Police Officer Desena was interviewed on May 24th, 2022 (**BR 04**). Police Officer Warfield was interviewed on May 25th, 2022 (**BR 05**). Police Officer Keane was interviewed on May 26th, 2022 (**BR 06**). Police Officer Small was interviewed on June 28th, 2022 (**BR 07**).

§ 87(2)(b) stated that, on March 16th, 2021, he and his roommate, § 87(2)(b) were asleep in their apartment when Police Officer Desena, Police Officer Warfield, Police Officer Small, and Police Officer Keane knocked at their door. § 87(2)(b) and § 87(2)(b) answered the door and exited the apartment. Police Officer Desena asked § 87(2)(b) to let him enter the apartment, but § 87(2)(b) refused. Without consent, and without presenting a warrant, Police Officer Desena entered the apartment and “stroll[ed] through” the kitchen and living room. Police Officer Desena was inside the apartment for approximately one-to-two minutes before exiting.

Police Officer Desena stated that he responded to a 911 call at § 87(2)(b) address, which stated that approximately 6-7 people were trespassing within the § 87(2)(b) floor apartment. Police Officer Desena had been to § 87(2)(b) apartment multiple times for “the same issue” prior to this incident and was aware that § 87(2)(b) and § 87(2)(b) had been residing at that location for over 30 days. He did not believe that anyone lived at the apartment other than § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) Upon arrival, Police Officer Desena did not hear any noise coming from § 87(2)(b) closed apartment door. Once § 87(2)(b) and § 87(2)(b) exited, Police Officer Desena took one or two steps into the apartment and shined his flashlight around. He did this to ensure that no one else was inside the apartment and that no one was injured, since the original 911 call reported that there were 6-7 people within the apartment arguing. He was concerned for both his safety and the safety of anyone else who may have been in the apartment. He did not find anyone else within the apartment. He did not recall whether he asked for consent to enter the apartment, or if he informed either § 87(2)(b) or § 87(2)(b) that he would be entering. Police Officer Desena did not enter any rooms within the apartment. He exited after approximately 2-3 seconds.

Police Officer Warfield and Police Officer Small arrived at the location prior to Police Officer Desena and Police Officer Keane. Upon arrival, they spoke to the landlord, who had called 911 to report the trespass, and learned that this incident was a landlord-tenant dispute. They approached § 87(2)(b) and § 87(2)(b) front door and could not hear anything happening inside the apartment. They did not recall Police Officer Desena ever entering the apartment.

At 8:40 in Police Officer Warfield's BWC footage (**BR 18**), § 87(2)(b) and § 87(2)(b) exit their apartment, and Police Officer Desena directs them to stand against a brick wall to the left of the front door. § 87(2)(b) attempts to close his front door behind him, but Police Officer Desena states, "Don't close the door." § 87(2)(b) and Police Officer Desena argue briefly before Police Officer Desena enters the apartment. § 87(2)(b) attempts to enter the apartment after him, but Police Officer Small prevents him from doing so. Police Officer Desena remains in the apartment for less than a minute.

At 01:00 in Police Officer Desena's BWC footage (**BR 19**), Police Officer Desena is inside the apartment but remains within approximately 3-4 feet of the front door. He shines his flashlight as he looks around. He exits shortly after. At 03:40, § 87(2)(b) states, "You're trying to force yourself into the house. Police Officer Desena states, "No one is forcing. I knocked on the door, you opened the door... For my safety, I have to get you out, because I don't know who you have in here." § 87(2)(b) states, "You don't have to get me out of my own house. You don't have a warrant to get me out of my house."

The EVENT corresponding to this incident (**BR 08**) states that a 911 call was placed at 3:35 PM to report a trespass of 6-7 people at § 87(2)(b). No other information was provided.

The courts have established that warrantless entries into private residences are presumed unconstitutional. Exceptions to this rule include consent, hot pursuit, exigent circumstances, and an emergency situation (It is undisputed that there was no hot pursuit or consent provided during this incident). In order to invoke the Emergency Doctrine, (1) an officer must have reasonable grounds to believe that there is an emergency at hand which would require the immediate need for police intervention, and this belief must be grounded in empirical facts rather than subjective feelings; and (2) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. Rodriguez, 77 A.D.3d 280 (2010) (**BR 11**). In regards to the exigent circumstances exception, the courts utilize a six-part test: "(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause...to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry." People v. McBride, 14 N.Y.3d 440 (2010) (**BR 20**).

Given each officer's testimony that they did not hear anything through the closed door prior to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) exiting the apartment, and that the original 911 call reported a trespass of 6-7 people with no additional information, there was no initial indication that an emergency or a violent crime was underway. Additionally, Police Officer Desena had had prior experiences at this location, for what he referred to as “the same issue,” and believed that only § 87(2)(b) and § 87(2)(b) resided in the apartment. § 87(2)(g)

Furthermore, while, contrary to § 87(2)(b) account, Police Officer Desena did not walk around the apartment, in using his flashlight to illuminate various parts of the apartment after he entered, Police Officer Desena still conducted a search of the apartment. § 87(2)(g)

Allegation (C) Discourtesy: Police Officer Robert Desena spoke discourteously to § 87(2)(b).

Allegation (D) Discourtesy: Police Officer Robert Desena spoke discourteously to § 87(2)(b).

§ 87(2)(b) stated that Police Officer Desena was “aggressive” and “hostile” throughout the incident. § 87(2)(b) did not recall exactly what Police Officer Desena said, but he felt it was rude.

At 07:43 in Police Officer Warfield’s BWC footage (BR 18), Police Officer Desena states, “Open the fucking door.” After § 87(2)(b) and § 87(2)(b) open the door, at 08:32, Police Officer Desena states, “Come outside. I’m sick of this shit. Every time I come here you’re always sleeping.” At 08:44, Police Officer Desena states, “That’s enough of this shit. Everyone’s fucking sleeping. Don’t close the door.” Immediately after, Police Officer Desena enters the apartment.

All officers testified that they did not recall whether Police Officer Desena used any profanity during the incident. After being shown Police Officer Warfield’s BWC footage (BR 18), Police Officer Desena acknowledged that he used profanity toward § 87(2)(b) and § 87(2)(b). He used the words, “shit,” and “fuck,” because he had been to § 87(2)(b) apartment multiple times for the same issue. Beyond this reason, Police Officer Desena “did not know” why he used profanity.

Patrol Guide Procedure 200-02 (BR 10) states that members of service must “render [their] services with courtesy and civility.”

While officers are generally prohibited from using profanities toward civilians, they may use profanities “in the context of a dynamic situation over which [they are] attempting to gain control,” but may not do so when it “[serves] no legitimate purpose but to belittle” a civilian. PD v. Pichardo, DAO DCT Case Number 2015-15012 (BR 21).

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Robert Desena threatened to arrest § 87(2)(b).

§ 87(2)(b) stated that, after Police Officer Desena exited the apartment, he stated to § 87(2)(b) “Don’t get smart with me or I’ll arrest you.”

At 01:10 in Police Officer Desena’s BWC footage (**BR 19**), Police Officer Desena exits § 87(2)(b) apartment and does not make any comments to § 87(2)(b) about him potentially being placed under arrest. At no point in any officer’s BWC footage does Police Officer Desena bring up the topic of arrest.

No officer recalled the topic of arrest ever being brought up or there being probable cause to arrest either § 87(2)(b) or § 87(2)(b).

Taken in totality, all four officers’ BWC footage covers the entire incident up to their departure. Each officer’s BWC footage ends as they are walking down the driveway, away from the front door. The topic of arrest was never brought up, and Police Officer Desena never threatened to arrest § 87(2)(b).
§ 87(2)(g)
§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Robert Desena refused to provide his name to § 87(2)(b)

Allegation (G) Offensive Language: Police Officer Robert Desena made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) stated that, as the officers were leaving the scene, Police Officer Desena walked halfway down the driveway before turning around and stating to § 87(2)(b) “You know something? You’re such a nigger.” Police Officer Desena then entered his vehicle and left the scene.

Police Officer Desena stated that § 87(2)(b) and § 87(2)(b) went back into their apartment and closed the door as the officers were leaving. When Police Officer Desena was halfway down the driveway, § 87(2)(b) opened the door and asked for Police Officer Desena’s name, which Police Officer Desena did not provide. Police Officer Desena never called § 87(2)(b) a nigger, and he did not interact with § 87(2)(b) after he’d gone back into his apartment. He did not respond to § 87(2)(b) request for his name because both § 87(2)(b) and § 87(2)(b) had been filming on their smart phones earlier in the incident. Police Officer Desena believed that they already had his name in their cell phone footage.

Police Officer Warfield, Police Officer Small, and Police Officer Keane all testified that they never heard Police Officer Desena call § 87(2)(b) or § 87(2)(b) a nigger; nor did they hear Police Officer Desena make any remarks to either civilian based on their perceived race or ethnicity. Police Officer Warfield and Police Officer Small left the scene before Police Officer Desena and Police Officer Keane.

At 05:42 in Police Officer Desena’s BWC footage (**BR 19**), § 87(2)(b) is standing in his apartment with the door opened, speaking to officers. § 87(2)(b) is behind him but is not interacting with the officers. Police Officer Desena reaches in and shuts their apartment door before turning around and walking down the driveway. § 87(2)(b) is heard asking Police Officer Desena for his name right before the recording ends. § 87(2)(b) is not visible on camera, and it is unclear whether § 87(2)(b) is also present at this point. The footage of all of the other officers’ BWCs end seconds before this point.

Patrol Guide Procedure 203-09 (BR 09) states that officers must provide their names to anyone who

requests such information.

§ 87(2)(g) Police Officer Desena testified that he did not verbally provide his name to § 87(2)(b) after § 87(2)(b) asked for it. § 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 12).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 13).
- Police Officer Desena has been a member of service for five years and has been a subject in five other CCRB complaints and fifteen other allegations, none of which were substantiated.

§ 87(2)(g) [REDACTED]

Mediation, Civil, and Criminal Histories

- Mediation was not offered to § 87(2)(b) due to an Agency moratorium on referring cases to the Mediation Unit.
- As of April 20th, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (BR 16).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

15).

Squad: __02

Investigator:

Teecie Dove

Signature

Inv. Teecie Dove

Print Title & Name

July 13th, 2022

Date

Squad Leader: Alexander Opoku-Agyemang
Signature

IM Opoku-Agyemang
Print Title & Name

7/13/2022
Date